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Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns

Summary

The report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, submitted to the Human Rights Council pursuant to its Resolution 17/5, discusses the protection of the right to life during law enforcement and makes the case for the need for a concerted effort to bring domestic laws on the use of (especially lethal) force by the police in line with the international standards.

The report suggests that the Council articulates the basic outline of the legal framework for the use of remotely piloted aircraft or armed drones and calls on the Council to remain engaged with the matter of autonomous weapons systems.

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I. Activities of the Special Rapporteur

A. Communications

1. The present report covers communications sent by the Special Rapporteur between 1 March 2013 and 28 February 2014, and replies received between 1 May 2013 and 30 April 2014. The communications and responses from Government are included in the following communications reports of special procedures: A/HRC/24/21, A/HRC/25/74 and A/HRC/26/21.

2. Observations on the communications sent and received during the reporting period are also reflected in an addendum to the present report.

B. Visits

3. The Special Rapporteur visited Mexico from 22 April to 2 May 2013 and Papua New Guinea from 3 to 14 March 2014.

4. The Special Rapporteur has sent country visit requests to the Governments of Yemen, the Islamic Republic of Iran, Iraq and Ukraine. The Special Rapporteur thanks the Governments of the Gambia and Yemen, who have responded positively to his requests, and encourages the Governments of Sri Lanka, Pakistan, Islamic Republic of Iran, Iraq and Madagascar to accept his pending requests for a visit.

C. Press Releases[1]

5. On 4 May 2013, the Special Rapporteur jointly with other mandate holders stressed the importance of stopping violent acts against persons with albinism in the United Republic of Tanzania.

6. On 5 August 2013, the Special Rapporteur issued a joint statement on the situation of human rights in the Central African Republic. Another joint statement on 19 December 2013 urged all parties in the Central African Republic to call for an immediate halt to the violence.

7. A joint statement was issued on 25 October 2013 advocating for commitments in the Post-2015 Development Agenda on reducing inequalities, promoting social protection and ensuring accountability.

8. On 10 December 2013, the independent experts in the United Nations Human Rights joint system urged world governments to cooperate with them, and allow human rights organizations and individuals to engage with the United Nations "without fear of intimidation or reprisals."

9. On 9 December 2013, the Special Rapporteur issued a joint press release calling on the Government of Iraq to establish the fate of seven residents of Camp Ashraf.

[1] Press releases of the Special Rapporteur are available at http://www.ohchr.org/en/NewsEvents/Pages/NewsSearch.aspx?MID=SR_Summ_Executions.

10. On 26 December 2013, he issued a joint press release to express serious concern about lethal drone airstrikes, allegedly conducted by United States forces in Yemen, that resulted in civilian casualties.

11. The Special Rapporteur also issued additional joint statements with other mandate holders on the death penalty.

D. International and national meetings

12. On 3 and 4 October 2013, the Special Rapporteur participated in the Expert Meeting on Promotion and Protection of Human Rights in Assemblies and Protest held at the University of Pretoria, South Africa and co-organized by the Geneva Academy.

13. On 22 October 2013, he delivered a Statement on Lethal Autonomous Robots at an event organized by the United Nations Institute for Disarmament Research (UNIDIR) in New York.

14. On 25 October 2013, he jointly organized a side event on the theme "Drones and the Law" in New York.

15. On 29 October 2013, he participated in an event on drone strikes and targeted killings co-hosted by New York University and the Open Society Institute.

16. On 2 December 2013, he attended a seminar organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the promotion and protection of human rights in the context of peaceful protests.

17. From 3 to 5 December 2013, he took part in an Expert Meeting on Drones and Robots under international law organized by the Geneva Academy in partnership with UNIDIR, held in Divonne, France.

18. On 6 December 2013, he participated in the "Alkarama Award" prize-giving ceremony, held in honour of a Yemeni journalist, Abdulelah Haider, in Geneva.

19. The Special Rapporteur took part in an Expert Meeting on transparency and the death penalty organized by International Commission against the Death Penalty on 21 January 2014.

20. From 24 to 25 February 2014, he delivered a paper on lethal autonomous robots at the conference organized by Chatham House in London.

21. On 27 February 2014, the Special Rapporteur organized an Expert Meeting on the Use of Force by Law Enforcement Officials, held in Geneva, Switzerland. The purpose of the meeting was to inform the present report.

II. Protecting the right to life in law enforcement: The need for domestic law reform

A. Background and rationale

22. Law enforcement officials worldwide play an important role in protecting society from violence, enforcing justice, and securing the rights of people. (Law enforcement officials are also referred to as "the police" in this report for short, but the term includes all officers of the law who exercise police powers, especially the powers of arrest or detention,

including members of the military forces who have such powers).[2] They often do so under difficult and dangerous circumstances, and in some cases they cannot fulfil their functions without resorting to force. The modern State, which has to deal with a range of challenges, cannot function without the police. The human rights system as such also cannot be effective without the police and, in some cases, without the use of force.

23. Power, of course, comes with responsibility. The extensive powers vested in the police are easily abused in any society, and it is in everyone's interests for it to be the subject of constant vigilance. To function properly, the police need proper guidelines on the use of force and appropriate mechanisms for accountability to be in place.

24. The police may cause as many as 1 out of every 25 violent deaths in the world, in some cases in conformity with the law but in others not. It is estimated that 21,000 people were killed worldwide in 2011 by law enforcement officials (of an overall estimate of 526,000 violent deaths).[3] Reports of impunity where people have died at the hands of the police are likewise common.

25. Some cases of unlawful killings by law enforcement officials involve the use of force that no one would argue is lawful under either international or domestic law, as with politically motivated hit squads and extrajudicial executions. This report does not deal with such situations: instead, it focuses on those cases where it is widely accepted that the police may use some force but where the domestic law poses lower standards for the use of force than those set by international law and/or where domestic law does not make provision for proper accountability mechanisms.

26. There are a number of reasons why this topic is important. One of the State's central duties is to protect life. It is a particularly serious breach of this duty when its own agents violate this right – leaving little hope that they will be effective in preventing violations by others. The first step of securing the right to life is thus the establishment of an appropriate legal framework for the use of force by the police, which sets out the conditions under which force may be used in the name of the State and ensuring a system of responsibility where these limits are transgressed.

27. However, it is not only violations of the right to life that are at stake when the police use force. Open-ended and unchecked powers of the police intimidate and preclude those who wish to exercise other rights and freedoms. Latitude for the police to use force at will is often an integral part of authoritarian rule, where "might is right". It is widely accepted today that, as part of democratic policing, law enforcement officials should be accountable to the population. They are citizens in uniform, performing a function on behalf of other citizens and their powers thus need to be constrained.

28. The relevance of an inquiry into the question whether proper constraints on police power are in place is further enhanced by the increased prevalence of demonstrations as a method of political and social participation. Lives on all sides of the spectrum, including those of police officers, are lost unnecessarily when the way in which protest is managed leads to an escalation of violence on all sides. Political and other freedoms are brought under threat and the security of the State may eventually be put at risk if the power of the police is not properly controlled.

29. The specific relevance of domestic law in this context stems from the fact that the laws of each State remain the first line and in many cases effectively the last line of defence

[2] General Assembly resolution 34/169, Code of Conduct for Law Enforcement Officials, commentary to art.1, (1979).

[3] Geneva Declaration Secretariat, *Global Burden of Armed Violence 2011: Lethal Encounters*, Cambridge, CUP, 2011.

for the protection of the right to life, given the irreversibility of its violation. National and local laws play an important role in defining the understanding by law enforcement officials and the population alike of the extent of the police powers, and the conditions for accountability. As such, there is a strong need to ensure that domestic laws worldwide comply with international standards. It is too late to attend to this when tensions arise.

30. This is obviously not to say that once proper domestic laws are on the statute books the protection of the right to life is guaranteed. Implementation is in many instances lacking. However, the focus of this report is not on implementation. Instead, its ambitions are confined to a necessary but insufficient component of protecting the right to life – the question whether appropriate domestic laws on the use of force are in place. In particular, the report seeks ways to contribute towards law reform in those States that are most out of line with the international standards as a first step towards greater global protection of the right to life.

31. While many States have reformed their laws during the last few decades to give greater expression to the international rules and standards, in others the laws in force today date (in form or in substance) from the pre-human rights era – in particular from colonial times[4] – or form part of the legacy of former dictatorial regimes.

32. Moreover, in some cases progress that has been made is under threat. For example, in Peru, a January 2014 law grants exemption from criminal liability to law enforcement officials who cause injury or death in the performance of their duties through the use of weapons, or any other means.[5] In Kenya, a law that incorporates most of the international requirements risks being repealed.[6] In particular, the threat of terrorism is used to legitimize far-reaching infringements of civil liberties during protest.[7] There is also a danger that laws such as the one recently adopted by Honduras entitling the State to shoot down civilian airplanes may be used to violate the right to life, for example in the name of drug control.[8]

33. This report – building on earlier reports that explored some of the same issues[9] – makes the case for the need for ongoing legal reform, in States across the world, to bring domestic laws on the use of force into conformity with international law.

34. The Special Rapporteur intends to remain involved in this issue for the rest of his term as mandate-holder, and wants to express his willingness to provide or arrange assistance to States who want to take this issue forward.

B. Methodology, limitations and sources

35. The legislation of 146 countries was considered for the purposes of this report. In September 2013, the Special Rapporteur sent out a *note verbale* to all permanent missions of United Nations member States represented in Geneva, informing them of the upcoming report and asking them, in order to ensure that their domestic laws are accurately represented, to provide him with copies of their national laws on the use of force. He

[4] The British Riot Act of 1714, for example, served as a model for many former British colonies. In the case of France, the *Loi du 7 juin 1848 sur les attroupements* (modified in 1943) was likewise copied in overseas territories.

[5] Law 30151 (2014).

[6] National Police Service (Amendment) Bill, 2013 and National Police Service Commission (Amendment) Bill, 2013.

[7] See http://www.bbc.co.uk/portuguese/noticias/2014/02/140213_leis_protestos_pai.shtml (in Portuguese).

[8] See http://www.reuters.com/article/2014/01/18/us-honduras-drugs-idUSBREA0H04920140118.

[9] A/66/330 and A/HRC/17/28.

wishes to express his thanks to the 25 States that responded by providing their laws and in many cases also detailed commentary: Argentina, Austria, Azerbaijan, Chile, Cuba, Cyprus, Ecuador, Estonia, Georgia, Germany, Greece, Guatemala, Iraq, Ireland, Mexico, Monaco, Norway, Pakistan, Qatar, Russian Federation, Spain, Sri Lanka, Sweden, Switzerland and the Syrian Arab Republic.

36. In the case of States that have not responded, legislation was obtained from what is available in the public domain.

37. The study looks only at legislation, and not at other sources of law, such as legal precedents (which in some States are a source of law) or at the operational orders of the police. Some of the elements of a comprehensive system regulating the use of force may not be recognized in the statutory provisions, but could be contained in other parts of the law.

38. Importantly, the study also does not consider the practical implementation of the laws in question. This is a massive task to which the international research community – in particular those researchers based in the societies in question – should pay more attention.

39. The study concentrates only on the use of force as part of law enforcement operations, and does not deal with the use of force in the conduct of hostilities during armed conflict.

40. The laws that were accessed during the course of this study are available at www.use-of-force.info. This website will be maintained and updated in the future. States that have not yet submitted their laws to the Special Rapporteur, and other interested parties, are encouraged to send their laws and additional material, including new laws, judicial decisions and operational orders, as well as training material.

41. In this report, not all of the full names and references of the laws cited are provided, in the interests of space, and because the aim is rather to provide an example of a wider practice than to single out specific States.

C. The right to life

42. The right to life is often described as a fundamental human right; a right without which all other rights would be devoid of meaning.[10] The right is recognized in a variety of widely ratified global and regional treaties and other instruments.[11] Article 6(1) of the International Covenant on Civil and Political Rights provides that "every human being has the inherent right to life [which] right shall be protected by law. No one shall be arbitrarily deprived of his life." The right to life is also a rule of customary international law[12] and it has been described as part of *jus cogens*.[13] Extensive jurisprudence has been developed on all levels, on the limits on the use of force by law enforcement officials.

43. On the global stage, two main "soft law" instruments set out in some detail the conditions under which force may be used by law enforcement officials and the

[10] Manfred Nowak, *UN Covenant on Civil and Political Rights. CCPR Commentary*, Kehl am Rhein. Engel, 2005, p. 121.

[11] African Charter on Human and Peoples' Rights, art. 4; American Convention on Human Rights, art. 4; Arab Charter on Human Rights, art. 5; European Convention on Human Rights, art. 2; and ASEAN Human Rights Declaration, art. 11.

[12] Moeckli *et al.* (eds.) *International Human Rights Law*, New York, Oxford University Press, 2010, p. 221.

[13] See Nowak (footnote 10), p. 122.

requirements of accountability: The Code of Conduct for Law Enforcement Officials (Code)[14] and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials of 1990 (Basic Principles).[15] The Code is provided with a commentary, further elaborating on its articles.

44. These two instruments have been developed through intensive dialogue between law enforcement and human rights experts, and have been endorsed by a large number of States.[16] They are widely accepted as authoritative statements of the law.[17]

45. These instruments are available in all six United Nations languages and in a number of other languages as well.[18] At the same time, it is a matter of concern that important constituencies do not seem to know about them – for example, standard textbooks on "police use of force" fail to cite them.

46. The right to life has two components. The first and material component is that every person has a right to be free from the arbitrary deprivation of life: it places certain limitations on the use of force. The second and more procedural component is the requirement of proper investigation and accountability where there is reason to believe that an arbitrary deprivation of life may have taken place.

47. As is the case with other rights, States are required to respect and to protect the right to life. This, in the words of article 6(1) of the International Covenant on Civil and Political Rights, includes the duty to do so "by law". The police in any society will at some point be confronted with a situation where they have to decide whether to use force and, if so, how much. Enacting an adequate domestic legal framework for such use of force by police officials is thus a State obligation, and States that do not do this are in violation of their international obligations.

48. According to the United Nations Human Rights Committee:

> States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.[19]

49. In *Nadege Dorzema and others v. Dominican Republic* the Inter-American Court of Human Rights (24 October 2012) held that the Dominican State had failed to comply with its obligation to protect the right to life because it had failed to adopt adequate legal

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[14] Adopted by the General Assembly in its resolution 34/169 (1979). See also, Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, E.S.C Res. 1989/65, 24 May 1989.

[15] Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Cuba, 1990. United Nations General Assembly resolution 45/111 adopted without a vote the same year welcomed the Basic Principles.

[16] A/61/311, para. 35.

[17] For example, it served expressly as the model for the National Guidelines on the Use of Force in Australia. Bronitt *et al.* (eds.), *Shooting to kill*, Hart, 2012, p. 153. In 2011, the Government of Brazil established Guidelines on the Use of Force by Agents of Public Safety, based on the Basic Principles – see http://www.unodc.org/lpo-brazil/en/frontpage/2011/01/05-governo-brasileiro-estabelece-diretrizes-sobre-o-uso-da-forca-por-agentes-de-seguranca-publica.html.

[18] See http://www.hrea.org/index.php?base_id=103&language_id=1&lnk_count=20&month=&year=&category_id=12&category_type=3&group.

[19] Human Rights Committee General Comment No. 6 (1982), para. 3; and Nils Melzer, *Targeted Killing in International Law*, Oxford University Press, 2008, pp. 104 and 105.

provision on the use of force. It was ordered that the State must, within a reasonable time, adapt its domestic law, incorporating the international standards on the use of force by law enforcement agents.

50. The Basic Principles provide that "Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials"[20] and that they shall ensure that "arbitrary or abusive use of force or firearms by law enforcement officials is punished as a criminal offence under law."[21]

51. States are also required to take reasonable precautions to prevent loss of life, wherever necessary in legislation or subordinate law. This includes putting in place appropriate command and control structures; providing for the proper training of law enforcement officials in the use of force, including less lethal techniques; where possible, requiring the issuing of a clear warning before using force; and ensuring medical assistance is available.[22] In the specific case of demonstrations, it also arguably entails adhering to the standards on the facilitation and control of demonstrations to prevent volatile situations from escalating out of control.

52. The Basic Principles require that governments and law enforcement agencies "should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms... For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment."[23] The point is thus not merely that it should be used if available (as is required by necessity), but that such equipment will be made available in the first place. States shall also ensure that "all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force".[24]

53. An increasing body of knowledge is available on how crowds can be handled in ways that can defuse as opposed to escalate the tension,[25] and it is the responsibility of the commanding leadership of law enforcement to ensure that this knowledge is used in the planning, preparation and concrete policing of assemblies. Failure to take note of such information and repeating the mistakes of the past with deadly consequences run contrary to the duty to protect life, and would have to be considered a failure in command responsibility. Indeed, making sure that domestic law complies with the international standards on the use of force (and, arguably, human rights standards in general) is an important preventative measure.

54. Human rights law recognizes that, in times of public emergency, States may within specified limits take measures derogating from their obligations under international human rights treaties.[26] While certain rights may be restricted or suspended during times of public emergency, the right to life is non-derogable and must be respected, even during such times.[27]

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[20] Principle 1 and Principle 11.

[21] Principle 7.

[22] See Melzer (footnote 19), p. 203.

[23] Principle 2.

[24] Principle 19. Also Principles 18 and 20.

[25] A/HRC/17/28, pp. 17-18.

[26] International Covenant on Civil and Political Rights, art. 4; American Convention on Human Rights, art. 27; Arab Charter on Human Rights, art. 4; European Convention on Human Rights, art. 15.

[27] Human Rights Committee General Comment No. 29 (2001) and Basic Principle 8.

1. Requirements for the use of force

55. Everyone has a right not to be arbitrarily deprived of his or her life, with "arbitrary" being understood here to mean unlawful in terms of international standards. This implies that the right to life is not an absolute right – it may be legitimately deprived under certain circumstances, but the limitations to this right are exceptional and must meet certain standards. The onus is on those who claim they were justified in taking a life – here the State – to show that it was done within the confines of these limits. Any deprivation of life must meet each of the following requirements, which together form the comprehensive or holistic set of requirements that should be posed by the domestic legal system. If any of these requirements is not met the deprivation of life will be arbitrary.

(a) Sufficient legal basis

56. For the use of lethal force not to be arbitrary there must, in the first place, be a sufficient legal basis. This requirement is not met if lethal force is used without the authority being provided for in domestic law, or if it is based on a domestic law that does not comply with international standards.[28]

57. The laws in question must also be published and be accessible to the public.[29]

(b) Legitimate objective

58. Rights may be limited – and force may likewise be used – only in the pursuit of a legitimate objective. As will be discussed below, the only objective that can be legitimate when lethal force is used is to save the life of a person or to protect a person from serious injury.

(c) Necessity

59. The use of force can be necessary only when a legitimate objective is pursued. The question is whether force should be used at all, and if so how much. This means that force should be the last resort (if possible, measures such as persuasion and warning should be used), and if it is needed, graduated force (the minimum required) should be applied. Any such force may also only be used in response to an imminent or immediate threat – a matter of seconds, not hours.[30]

60. Necessity in the context of lethal force has been said to have three components.[31] *Qualitative* necessity means that the use of potentially lethal force (such as through a firearm) is not avoidable to achieve the objective. *Quantitative* necessity means the amount of force used does not exceed that which is required to achieve the objective. *Temporal* necessity means the use of force must be used against a person who presents an immediate threat. In the context of the use of lethal (or potentially lethal) force, absolute necessity is required.

61. Principle 4 mandates that law enforcement officials must, as far as possible, apply non-violent means before resorting to the use of force and firearms. Where non-violent means prove ineffective or without promise of achieving the intended result, necessity requires that the level of force used should be escalated as gradually as possible.

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[28] Human Rights Committee (see footnote 19 above).

[29] *Nachova and Others v. Bulgaria*, European Court of Human Rights, application Nos. 43577/98 and 43579/98 (6 July 2005), para. 102; also, see Melzer (footnote 19 above), p. 114.

[30] A/68/382, paras. 33-37 and A/HRC/14/24.

[31] Melzer (see footnote 19 above), p. 101.

62. Governments and law enforcement agencies must "develop a range of means, as broad as possible, and... equip officials with various types of weapons and ammunition, thus allowing for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations."[32]

(d) Prevention/precaution

63. To this should be added the – often-overlooked – requirement of prevention or precaution.[33] Once a situation arises where the use of force is considered, it is often too late to rescue the situation. Instead, in order to save lives, all possible measures should be taken "upstream" to avoid situations where the decision on whether to pull the trigger arises, or to ensure that all the possible steps have been taken to ensure that if that happens, the damage is contained as much as is possible.

64. A failure to take proper precautions in such a context constitutes a violation of the right to life. In *McCann and Others v the United Kingdom*, for example, the European Court of Human Rights (application No. 18984/91, 27 September 1995) held that the use of lethal force by soldiers who erroneously but in good faith believed that a group of terrorists were about to trigger an explosion did not violate the right to life, but that the lack of control and organization of the operation as a whole did violate the right.

(e) Proportionality

65. The use of lethal force must also meet the requirement of proportionality. In general terms, when any right is limited, proportionality requires that the good that is done must be compared with the threat posed.[34] The interest harmed by the use of force is measured against the interest protected; where force is used, whether lethal or not, the same norm applies. According to the Basic Principles: "Whenever the lawful use of force and firearms is unavoidable, law enforcement officers shall... exercise restraint and act in proportion to the seriousness of the offence and legitimate objective to be achieved."[35]

66. Proportionality sets a maximum on the force that might be used to achieve a specific legitimate objective. It thus determines at what point the escalation of force that is necessary to achieve that objective must stop.[36] If necessity can be visualized as a ladder, proportionality is a scale that determines how high up the ladder of force one is allowed to go. The force used may not go above that ceiling, even if it might otherwise be deemed "necessary" to achieve the legitimate aim.

67. Special considerations apply when (potentially) lethal force is used. In the context of such use of force, the requirement of proportionality can be met only if such force is applied in order to save life or limb. What is required in respect of lethal force is thus not ordinary proportionality but strict proportionality.

68. According to article 3 of the Code, law enforcement officials may "use force only when strictly necessary and to the extent required for the performance of their duty". The Commentary further explains: "[e]very effort shall be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected

[32] Principle 2.
[33] International Committee of the Red Cross (ICRC), *Violence and the Use of Force*, Geneva, 2011, p. 17; and Melzer (footnote 19 above), pp. 101 and 199.
[34] See *Nachova* (footnote 29 above).
[35] Principle 5.
[36] A/61/311, para. 42.

offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender."[37]

69. The pivotal Principle 9 does not use the term "force and firearms", as do the preceding provisions, but merely refers to the use of firearms. It poses a higher threshold for the use of firearms than for force in general and provides that "Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against an imminent threat of death or serious injury… and only when less extreme measures are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."

70. Principle 9 is a strong affirmation of the principle of proportionality: All uses of firearms against people should be treated as lethal or potentially lethal. The first part of Principle 9 provides that potentially lethal force may be used only to avert a potentially lethal threat or a risk of a similarly serious nature (e.g. self-defence against a violent rape). The second part deals with the intentional lethal use of force, which in any event may only be used when strictly unavoidable to protect life. What will be called the "protect life" principle – a life may be taken intentionally only to save another life – may be described as the guiding star of the protection of the right to life.

71. A common sense understanding of the scope of application of Principle 9 suggests that all weapons that are designed and are likely to be lethal should be covered, including heavy weapons such as bombs and (drone) missiles, the use of which constitutes an intentional lethal use of force.

72. The "protect life" principle demands that lethal force may not be used intentionally merely to protect law and order or to serve other similar interests (for example, it may not be used only to disperse protests, to arrest a suspected criminal, or to safeguard other interests such as property). The primary aim must be to save life. In practice, this means that only the protection of life can meet the proportionality requirement where lethal force is used intentionally, and the protection of life can be the only legitimate objective for the use of such force. A fleeing thief who poses no immediate danger may not be killed, even if it means that the thief will escape.

73. This is where fundamental differences between the general orientation of international law and many domestic human rights systems lie. While international law is aimed primarily at the preservation of life and limb, some domestic legal systems have as their first priority the protection of law and order. Drawing the line for the use of lethal force at violations of law and order, and not asking in addition whether there is a real danger, carries grave risks for lives and for a society based on human rights. The challenge is to bring the blunt generalizations of some domestic systems in compliance with the more principled requirements set by the international standards.

(f) Non-discrimination

74. At times, the police exercise higher levels of violence against certain groups of people, based on institutionalized racism or ethnic discrimination.[38] Discrimination on these, and other, grounds also impacts on patterns of accountability. States must instead adopt both a reactive and a proactive stance, encompassing all available means, to combat racially motivated and other similar violence within law enforcement operations.[39]

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[37] Code, commentary to art. 3.
[38] A/HRC/14/24/Add.8.
[39] See *Nachova* (footnote 29 above), paras. 145 and 161.

(g) Special provisions on demonstrations

75. It is widely accepted that it is the task of the police to facilitate and, if necessary, manage peaceful protest. In addition to the general provisions outlined above, three principles deal with the specialized case of policing of assemblies in the Basic Principles.[40] In the case of lawful and peaceful assembly, no force may be used.[41] If there is good reason to disperse an unlawful assembly that is peaceful, only the minimum force necessary may be used.[42] Lethal force clearly has no role to play. The mere fact that some protesters in the crowd are violent does not turn the demonstration as a whole into a non-peaceful assembly.[43] In violent assemblies (that are both unlawful and not peaceful) minimum force should also be used, and firearms may be used only in accordance with Principle 9. Indiscriminate fire into a crowd is never allowed.[44]

(h) Special provisions on people in custody or detention

76. Law enforcement officials, in their relations with persons in custody or detention, are required not to use firearms except in self-defence or defence of others "against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in Principle 9".[45]

(i) Requirements after the use of force

77. In addition to the need for accountability, medical assistance must be provided to injured persons after the use of force or firearms by law enforcement,[46] and relatives or close friends of injured or affected persons must be notified at the earliest possible moment.[47] The Code and Basic Principles provide that effective reporting and review procedures must be established to address any incident in which a potentially unlawful use of force occurs.[48]

2. Accountability

78. The procedural component of the right to life requires that States investigate apparently unlawful or arbitrary killings.[49] States are obliged, under article 2(3) of the International Covenant on Civil and Political Rights, to "ensure that any person whose rights or freedoms… are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in official capacity". States parties are required to ensure that all persons shall have the right for a remedy to be determined by a competent authority and for the authority to enforce remedies when granted.[50]

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[40] The heading "policing of unlawful assemblies" is not appropriate since lawful assemblies are also covered.

[41] Principle 12.

[42] Principle 13.

[43] A/HRC/17/28.

[44] Geneva Academy, *Facilitating Peaceful Protests*, Geneva, 2014, p. 21.

[45] Principle 16.

[46] Principle 5(c) and art. 6, with commentary, of the Code.

[47] Principle 5(d).

[48] Principle 22 and art. 8, with commentary, of the Code.

[49] Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (see footnote 14 above).

[50] Universal Declaration of Human Rights, art. 8; International Covenant on Civil and Political Rights, art. 2(3)(b) and (c); and Human Rights Committee General Comments No. 31 (2004).

79. The failure of the State to properly investigate cases of death following the use of force is a violation of the right to life itself.[51] At times there are "numerous findings of state violations of the right to life because of the absence of an effective investigation, even when the killing could not be found on the evidence to be firmly attributable to the state".[52]

80. Human rights treaty bodies, too, have recognized the obligation on States wherever a death results from the use of force, as a component of the right to life.[53] Content has been provided to the term "exhaustive and impartial investigations" as including the following factors: an official investigation initiated by the State; independence from those implicated; capability of leading to a determination of whether force used was justified in the circumstances; the requirement of a level of promptness and reasonable expedition; and a level of public scrutiny.[54]

81. To enable investigations, accountability and redress for the victims, important measures, including the following must be put in place: States are obliged to provide a system of reporting for whenever firearms are used by law enforcement officials[55]; investigations should also seek to establish command responsibility; and law enforcement officials must promptly report incidents where the use of force or firearms results in injury or death, to their superiors.[56]

82. This framework must include criminal, administrative and disciplinary sanctions. Modes of criminal accountability must include command or superior responsibility. The general existence of laws is not enough to ensure accountability of State officials – special measures are needed to ensure that those in office are held responsible. Many States lack such mechanisms.

83. An effective remedy is dependent on an effective investigation. The General Assembly has addressed the obligation of all States "to conduct exhaustive and impartial investigations… to identify and bring to justice those responsible… and to adopt all necessary measures… to put an end to impunity."[57]

84. Independent, external oversight of police is a best practice.[58] However, mere establishment of an external oversight body itself is insufficient. An effective external police oversight agency requires the necessary powers, resources, independence, transparency and reporting, community and political support, and civil society involvement.[59] In addition, a high degree of transparency is also required to ensure the long-term success of the oversight agency.[60]

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[51] *Kaya v. Turkey*, European Court of Human Rights, application No. 22729/93 (19 February 1998) paras. 86-92. and *McCann and Others v the United Kingdom*, European Court of Human Rights, application No. 18984/91 (27 September 1995) para. 169.

[52] Moeckli *et al.* (eds.) (footnote 12 above), p. 228.

[53] *Finucane v. The United Kingdom*, European Court of Human Rights, application No. 29178/95 (1 July 2003).

[54] *Isayeva v. Russia*, European Court of Human Rights, application No. 57950/00 (24 February 2005).

[55] Principle 11(f) and commentary to art 3 of the Code.

[56] Principle 6.

[57] General Assembly resolution 63/182.

[58] A/HRC/14/24/Add.8 at para 73. Also, African Commission on Human and Peoples' Rights, *Resolution on police reform, accountability and civilian police oversight in Africa* (2006).

[59] A/HRC/14/24/Add.8 at para. 74.

[60] *Ibid.*, paras. 61–63.

85. The Basic Principles provide that Governments shall ensure that an effective review process is available and that persons affected by the use of force and firearms have access to an independent process, including a judicial process.[61]

D. Domestic laws on the use of lethal force by law enforcement officials

1. Requirements for the use of force

(a) Sufficient legal basis

86. As a general concern, review of the laws studied for this report reveals that some States either explicitly allow the use of lethal force in violation of international standards, or leave the standards so widely open that it amounts to the same result. The twin requirements of necessity and proportionality are often either presented too weakly, or one, or both, are missing altogether.

(b) Necessity

87. To start on a positive note: some domestic laws do contain clear requirements of necessity and proportionality in their use of force provisions. For example, "[a] police officer shall always attempt to use non-violent means first and force may only be employed when non-violent means are ineffective or without any promise of achieving the intended result."

88. The laws of some countries provide that force "not greater than that required" or as "little force as necessary" shall be used. As an expression of the necessity requirement, this is not problematic, but without accompanying provisions on proportionality, such statements set the bar too low, and will allow the fleeing thief, posing no immediate danger, to be shot with apparent impunity.

89. Provisions that regulate the use of force in a large number of the States considered for this Report are vague and loosely defined. Terms such as "use all reasonable means necessary", "do all things necessary", and "use such means as are necessary to effect the arrest" are frequently used as the standard for the application of force. Provisions such as these, if not narrowed by accompanying requirements of proportionality and necessity, allow for wide and uncontrolled discretion to be exercised by the law enforcement official, without any additional safeguards. Wide personal discretion on the part of law enforcement officials rules out effective accountability.

90. Another concern also regards those States that allow law enforcement officials, after unsuccessful attempts to disperse an assembly, to "cause it to be dispersed by military force".

91. In those countries that provide that warning shall be given, many provide for two (or three) warnings before force may be used. Some countries, however, provide that once a warning has been issued for dispersal of an assembly, and the warning is not heeded, law enforcement officials may proceed summarily to disperse the assembly, by force. Some States have detailed provisions in police operational orders on the measures to be taken before dispersal of an assembly is allowed. This includes giving sufficient warning of the intention to disperse the assembly, as well as further warning before the dispersal takes place. Some countries also provide that any warning should be made in two or more languages, widely understood.

[61] Principles 22–26.

(c) Proportionality

92. As was stated above, in the case of many laws, proportionality is not recognized at all, but others do contain a reference to proportionality in some form or another. For example, "[t]he force used shall be proportional to the objective to be achieved, the seriousness of the offence, and the resistance of the person against whom it is necessary, and only to the extent necessary while adhering to the provisions of the law and Standing Orders." While this represents a clear exposition of the requirement of proportionality for the use of force in general, it does not address and thus leaves open the special case where lethal force is used and strict proportionality is the norm. Somewhere in the legal system – whether in the legislation or in court decisions or elsewhere – the "protect life" principle must be incorporated.

93. The emphasis in the laws reviewed is often placed merely on law enforcement objectives and not on the question of whether the person concerned poses a threat. The domestic laws of some States do not explicitly require either necessity or proportionality in the use of force by law enforcement officials. For example, "[i]f upon being so commanded, such assembly does not disperse … [a police officer] may proceed to disperse such assembly by force." These laws still largely follow the colonial model. In a striking example of an exclusive emphasis on law and order, one law allows for a police officer to use force as may be necessary to prevent any person involved in a demonstration from passing a barrier (erected by the police), "which force may extend to the use of lethal weapons".

94. While in the majority of countries considered there is a general provision regulating the use of force by any means, some countries do in fact make special provision for the use of firearms. This constitutes good practice. Some such domestic laws are in compliance with the international principles regarding the use of lethal force. For example, "[t]he use of firearms shall be allowed only if strictly necessary to preserve human life", and "[f]irearms may only be used [for] saving or protecting the life of the officer or other person, and in self-defence or in defence of other person against imminent threat of life or serious injury." However, in other countries the threshold is set very low. The following provision is a case in point: "Police may use weapons [where] public order or security [is] at stake."

95. In the context of arrest or escape, the use of force is often determined purely by the crime the person is suspected to have committed. A typical provision reads as follows: in the prevention of the crimes of burglary, housebreaking or forcible unnatural crimes, among others, "a person may justify any necessary force or harm, extending, in the case of extreme necessity, even to killing". Offences that are classified as felonies and crimes such as kidnapping in other cases permit the lethal use of force in effecting arrest or preventing escape. Some countries allow the use of lethal force based on the penalty for the suspected criminal offence; frequently where life imprisonment or imprisonment for 10 years or more is prescribed, but this does not constitute a reliable proxy for the question whether the person concerned is dangerous.

96. Similarly, some States allow for the use of firearms against prisoners or convicted persons, suspected of attempting to escape, without additional safeguards. In some of the States considered for this Report, lethal force is allowed in the protection of property.

2. Provisions on accountability

97. The laws of some States contain extensive accountability procedures. However, in many other States there are no such provisions, though it cannot be excluded that provisions on reporting injury or death, or the use of firearms, may in some cases be contained in subordinate regulations.

98. Especially worrying, however, are laws that provide explicit immunity to law enforcement officials who have used force. These laws relate to the use of force by police generally or in specific circumstances. Despite acting outside of the scope of the law, these officials are granted lesser sentences and, at times, full immunity from prosecution. This is sometimes tied to the condition that they acted in "good faith", but often there is a blanket ousting of the jurisdiction of the courts, mostly in the context of assembly.

99. The laws of some States require that criminal prosecutions can only be instituted against law enforcement officials when authorized by some arm of the State.

100. The practical result of a lack of proper accountability regarding violations of the right to life is that a situation is created where police officers are above the law. They are in effect given the power in their subjective discretion to create a situation that is worse than a "mini state of emergency" in two important ways: under a normal state of emergency the right to life is non-derogable, and the declaration of a state of emergency is subject to strict restraints.

E. Less-lethal weapons

101. The Basic Principles require States to develop and use so-called "non-lethal incapacitating weapons" where appropriate.[62] Given the relative lack of information on the risks associated with various weapons when the Basic Principles were drafted, it is not surprising that this reads almost like an unqualified endorsement of what today are commonly referred to in law enforcement as "less-lethal weapons". Modern developments require a more nuanced and analytical approach.

102. The increasing availability of various "less-lethal weapons" over the last few decades has been a significant development in law enforcement. Their availability can lead to greater restraint in the use of firearms and can allow for graduated use of force. However, this depends on the characteristics of the specific weapons and the context of its use.

103. The manufacture and sale of a wide variety of "less-lethal weapons" has become a veritable industry and is expanding. The weapons promoted in this category have diverse characteristics, mechanisms of injury and associated risks. They include chemical, blunt trauma, electric-shock, acoustic weapons and directed energy weapons.[63]

104. The problem is that in some cases "less-lethal weapons" are indeed lethal and can lead to serious injuries. The risks will be dependent on the type of weapon, the context of its use, and the vulnerabilities of the victim or victims. Innocent bystanders may also be affected where weapons cannot be directed at one individual.

105. The growing, largely self-regulated market of "less-lethal weapons" cannot solely determine policing weapons technology, especially when it could involve unacceptable human cost.[64] Clear and appropriate international standards are needed.[65]

106. There is a need for independent guidelines on the development and use of these weapon technologies, over and above standards that may be set by individual police forces or the manufacturers. Likewise, it may be necessary to place restraints on the international

[62] Principle 2.

[63] Davison, *"Non-lethal" weapons*, Palgrave, Macmillan, 2009.

[64] Corney, *Less Lethal Systems and the Appropriate Use of Force*, Omega Research Foundation, 2011, p. 2.

[65] For example, Basic Principle 3.

trade and proliferation of these weapons. Training of law enforcement officials in the use of new weapons should be relevant, regular and integrate a human rights law approach.

107. ICRC has made the argument that the use of toxic chemicals as weapons for law enforcement should be limited solely to riot control agents, i.e. "tear gas", highlighting the risks of using other chemical agents and the strict constraints of the current international legal framework. Their concern is that the use of some toxic chemicals for law enforcement presents serious risks of death and permanent disability to those exposed, risks undermining international law prohibiting chemical weapons, and could ultimately erode the consensus against the use of poison as a weapon during armed conflict.[66]

F. Opportunities to engage in, encourage and support domestic law reform

108. A wide range of actors are or may become involved in law reform of the kind described here. Clearly, the States in question are the main actors. However, there are also numerous other actors that can support or encourage such changes. These include non-governmental organizations (NGOs), academics, National Human Rights Institutions (NHRIs) and international human rights supervisory bodies.

109. Some existing initiatives and entry points in this regard may be highlighted. The mandate of OHCHR presents an opportunity for consultation with States to encourage domestic law reform and to promote cooperation at the multinational and regional levels.

110. The United Nations Office on Drugs and Crime (UNODC) has a special responsibility to promote the Code and the Basic Principles. UNODC's field offices work in, and provide further opportunity for, law reform with States. The upcoming United Nations Crime Congresses provide excellent opportunities to take this further. The United Nations Commission on Crime Prevention and Criminal Justice presents an opportunity for further work, reform of domestic laws and the monitoring or review of implementation of the Code and Basic Principles by States.

111. ICRC, among other activities, works with governments all over the world on the development of law, building respect for the law and the protection of persons in armed conflict and other situations of violence. The Organization for Security Cooperation in Europe and the Office for Democratic Institutions and Human Rights, work in police education and training, community policing and administrative and structural reforms. The European Commission for Democracy through Law provides assistance to members on human rights and rule of law.

112. The Pan-African Parliament has the capacity to adopt model laws of to conduct studies aimed at harmonization of laws. The African Commission on Human and Peoples' Rights is seeking to build synergies with NHRIs and NGOs with experience in the area of policing and human rights in Africa. A thematic study on the right to life, conducted by the Association of Southeast Asian Nations Intergovernmental Commission on Human Rights, presents a good opportunity for reform. The mandate of the African Union Commission on International Law also provides opportunities to engage in and support domestic law reform.

113. There is a dearth of research on the law and on the practice of the use of force in many countries around the world – in many cases in those societies where such engagement

[66] See http://www.icrc.org/eng/resources/documents/legal-fact-sheet/2013-02-06-toxic-chemicals-weapons-law-enforcement.htm.

is the most necessary. Local researchers should make this a priority. Moreover, law faculties and other similar institutions around the world should make sure that the Code and the Basic Principles are part of the curriculum.

114. In addition, awareness should be raised about the Code and the Basic Principles. This should be done broadly within law enforcement agencies, governments, universities, and society as a whole.

G. Conclusions

115. There is considerable and widespread divergence between the international standards regulating the use of lethal force by law enforcement officials and accountability, and the domestic law in many countries.

116. Bringing domestic laws on the use of force into line with international standards should be a top priority of States and of the international community.

117. As a starting point, all States should be asked the question whether their laws, seen as a whole, recognize the "protect life" principle.

H. Recommendations

1. To the United Nations

118. United Nations bodies involved in human rights monitoring, including treaty bodies, special procedures and the Universal Periodic Review, should closely scrutinize the laws and practices of States. There should also be scrutiny of mechanisms for accountability of law enforcement officials, in law and practice. The failure of a State to put into place a legal framework for the use of force by law enforcement officials that complies with international standards should be identified as a violation of the right to life itself.

119. The Human Rights Committee should consider undertaking another General Comment on the right to life. The Human Rights Council should consider appointing an expert body to develop standards and guidelines on the range of less-lethal weapons that would allow for a differentiated use of force consistent with international rules and standards.

120. The United Nations should engage with regional, as well as domestic, human rights initiatives, including academia, as entry points in order to ensure greater compliance with and knowledge of the international standards.

2. To States

121. Domestic laws regulating the use of force by law enforcement officials, where necessary, be brought in line with international standards. These reforms should not be limited to legislation alone, and include operational procedures and instruments for training.

122. Proper consideration should be given to whether law enforcement officials are properly trained and equipped to prevent situations where the need for the use of force may arise, particularly when monitoring assemblies.

123. There should be a focus on effective independent accountability mechanisms. This should be done in consultation with NHRIs or ombudsman offices and civil society.

124. **States must make their laws on the use of force publicly available.**

125. **States should not use emergency situations or terrorist threats as a pretext to erode the right to life by granting unchecked powers to use force to their law enforcement officials.**

3. **To regional bodies**

126. **The right to life should be a top priority for regional human rights systems. The emerging systems should link up with the United Nations and with other regional systems in this regard.**

127. **Regional bodies should engage with subregional bodies that have particular insight into the law and practice of States in the region, with a view to bringing about necessary law reform. Partnerships should be created to promote necessary reforms.**

128. **Regional bodies should monitor domestic laws on the use of force and accountability mechanisms, and consider adopting resolutions on strengthening these mechanisms.**

4. **To National Human Rights Institutions**

129. **NHRIs must make the protection of the right to life a matter of priority. In this context they must establish to what extent the domestic laws comply with international standards, and work towards law reform where necessary.**

5. **To NGOs and civil society**

130. **NGOs and civil society should engage with States on the applicable laws, and use all available entry points on the international front (such as shadow reports) to raise problems that are encountered with the status quo.**

131. **University-based and other researchers across societies should make the study and teaching of the rules on the use of force a priority.**

6. **To donors**

132. **The need to bring the domestic law in line with international standards should be a priority for those who provide financial and other assistance to States.**

III. Remotely piloted aircraft or armed drones and emerging autonomous weapons systems

133. The mandate has engaged with the Human Rights Council and the General Assembly on the issues raised by remotely piloted aircraft or armed drones over a number of years,[67] and has recently also done so on autonomous weapons systems (or lethal autonomous robots (LARs)).[68] While neither system has a human physically in the aircraft, in the case of armed drones, there are at least human operators on the ground taking decisions on who to target and when to release deadly force. Autonomous weapons systems have not yet been deployed, but if that were to happen, these weapons platforms, once

[67] A/HRC/4/20/Add.1 pp.245-246, 359; A/HRC/11/2/Add.5 p. 32; A/HRC/14/24/Add.6, paras. 79–86; and A/HRC/20/22/Add.3 para. 81. See also General Assembly documents A/65/321; A/68/382 and Corr. 1; A/68/389.

[68] A/HRC/23/47 and A/65/321.

activated, will select and engage targets in an autonomous way, without further human intervention. The debates in the Human Rights Council thus far on these issues have been fruitful and productive. The Council has also recently adopted a resolution to organize an interactive panel discussion of experts on the topic.[69]

134. Both armed drones and autonomous weapons systems raise complicated questions and issues of international humanitarian law as well as human rights – and in particular right to life – issues. The detailed arguments made in earlier Special Rapporteur reports to the Human Rights Council and the General Assembly will not be repeated here. However, the current moment seems to provide a good opportunity to make brief comments.

A. Remotely piloted aircraft (or armed drones)

135. It has been more than 10 years since the first reported armed drone strike in Yemen outside the scope of a traditional armed conflict, took place, on 3 November 2002.[70] Since then, and as at February 2014, according to some sources, a minimum estimate of 2,835 individuals have been killed in drone attacks in Pakistan, Yemen and Somalia alone.[71]

136. In some cases, such armed drone attacks may have been subject to and conformed with the rules of international humanitarian law (IHL), while in others there are serious concerns that they may not have met the IHL requirements. Some attacks also may not have occurred within the confines of an armed conflict, and as such should be measured by the more stringent requirements of international human rights law, which they almost certainly did not meet. There are also cases where there is genuine uncertainty. While there is agreement on most aspects of the international legal framework that is applicable to armed drones, there are some areas where its interpretation is still being debated.

137. Legal uncertainty in relation to the interpretation of important rules on the international use of force presents a clear danger to the international community. To leave such important rules open to interpretation by different sides may lead to the creation of unfavourable precedents where States have wide discretion to take life and there are few prospects of accountability. Such a situation undermines the protection of the right to life. It also undermines the rule of law, and the ability of the international community to maintain a solid foundation for international security.

138. To contribute towards a stronger global consensus on the regulation of armed drone strikes (by international law), it is proposed that the Council, among other relevant bodies, consider expressing its views on the applicable legal framework on drones, as has to some extent already been done by the General Assembly.[72]

139. The intervention by the European Union (EU),[73] with which the United Kingdom aligned itself,[74] during the debate in the Third Committee of the General Assembly, in

[69] A/HRC/25/22, para. 4.

[70] E/CN.4/2003/3, para. 39.

[71] See http://www.thebureauinvestigates.com/category/projects/drones/.

[72] On 18 December 2013 the General Assembly adopted by consensus resolution 68/178, which in para. 6 (s) urges States "to ensure that any measures taken or means employed to counter terrorism, including the use of remotely piloted aircraft, comply with their obligations under international law, including the Charter of the United Nations, human rights law and international humanitarian law, in particular the principles of distinction and proportionality".

[73] See http://webtv.un.org/watch/third-committee-27th-meeting-68th-general-assembly/2777317047001/#full-text, at 1:30:10; and European Parliament Resolution on the use of armed drones (2014/2567(RSP)).

[74] See http://webtv.un.org/watch/third-committee-27th-meeting-68th-general-

October 2013, on the report by the Special Rapporteur, provides an important point of reference. The EU expressed its view that:

(a) The current international legal framework is adequate to govern drone strikes;

(b) The right to life can only be adequately protected if all constraints on the use of force set out by international law are complied with;

(c) International central norms on the use of force must not be abandoned to suit the current use of drones;

(d) There should be transparency surrounding all drone operations to enhance accountability.

140. The above is a minimalist position. An intervention by the Council in similar terms, to which the following point may be added, will help to narrow down at least the outer limits of the debate:

(e) Outside of the narrow confines of armed conflict, any killing must meet the requirements of human rights law, and be strictly necessary and proportionate.

Recommendation

141. The Human Rights Council should express its views on how the relevant normative framework applies to remotely piloted aircraft or armed drones, setting out the basic interpretations of international law that it considers to be applicable.

B. Autonomous weapons systems

142. Not much time has elapsed since the Council considered the issue of autonomous weapons systems in May 2013.[75] With commendable speed, the issue has been taken up by various United Nations bodies. It was amongst other things considered by the First Committee of the General Assembly[76] and the Office of Disarmament Affairs of the United Nations.[77] The United Nations Institute for Disarmament Research has also initiated an expert process.

143. Perhaps most visible in Geneva was the fact that the State parties of the Convention on Certain Conventional Weapons agreed to place the issue on their agenda in May 2014.[78] This is to be welcomed as an important and serious step forward.

144. While the issue of autonomous weapons systems is clearly among other things a disarmament issue, and needs to be addressed in that context, it also has far-reaching potential implications for human rights, notably the rights to life and human dignity, and as such it is also a human rights issue. Based on the experience with armed drones, there is also a danger that such weapons will be used outside the geographical scope of established armed conflicts. Autonomous weapons systems therefore should remain on the agenda of the Council. It will lessen the chances for the international community to find a sustainable

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assembly/2777317047001/#full-text at 1:48:36.

[75] A/HRC/23/47.

[76] See http://www.stopkillerrobots.org/2013/10/unga2013/.

[77] For example, www.un.org/disarmament/content/spotlight/index_2013.shtml; and www.un.org/disarmament/special/meetings/firstcommittee/68/pdfs/TD_29-Oct_CW_Netherlands.pdf.

[78] See http://www.reachingcriticalwill.org/news/latest-news/8583-ccw-adopts-mandate-to-discuss-killer-robots.

and comprehensive solution to the matter of autonomous weapons systems if it were to be dealt with only in either the disarmament or the human rights context, with the one lacking the perspective of the other on this vital issue.

Recommendations

145. The Human Rights Council should remain seized with the issue of autonomous weapons systems, in particular, as far as the rights to life and dignity are concerned. The Council, as the supreme United Nations body in the field of human rights, should engage with the work done by the disarmament structures in this regard and make its voice heard as the international debate unfolds.

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Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns

Addendum

Mission to Mexico*

Summary

The Special Rapporteur on extrajudicial, summary or arbitrary executions conducted an official visit to Mexico from 22 April to 2 May 2013. In this report, the Special Rapporteur presents his main findings and puts forwards recommendations to ensure enhanced protection of the right to life in Mexico.

The Government of Mexico has undertaken a number of positive initiatives to improve human rights protection of vulnerable persons, and significant constitutional reforms, among other institutional and policy improvements. Nevertheless, violations of the right to life directed against vulnerable groups continue to take place at an alarmingly high rate. Impunity remains a serious concern at the individual and systemic levels.

Problems in the protection of the right to life in Mexico are due to various factors including deficiencies in the legal system; increased organized crime activity and drug trafficking; unwillingness or lack of capacity of police and prosecutors to investigate; distrust in the judicial system by citizenry; and lack of accountability for violations. Accordingly, the Special Rapporteur draws particular attention in this report to the issue of ending impunity. To this end, there is an urgent need to decrease the involvement of the military in policing; ensure that civilian and not military courts try members of the military who are accused of having committed human rights violations; and establish clear and widely-known standards on the use of force by law enforcement officials at all levels of

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission and in Spanish only.

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government.

The Special Rapporteur recalls in this report that is important to look forward and to prevent future violations of the right to life. However, he stresses that it is equally important to ensure accountability for the violations of the right to life that have taken place in the past.

The gravity of the current situation must be faced squarely: the right to life is under serious threat in Mexico and addressing it should be a top national priority. A heavy-handed military approach is unlikely to improve the situation. What is called for is systematic, holistic and comprehensive strengthening of the rule of law, a critical element of which is ensuring accountability for abuses. The Special Rapporteur concludes this report by offering detailed recommendations.

Annex

[English and Spanish only]

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, on his mission to Mexico (22 April to 2 May 2013)

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I. Introduction

1. At the invitation of the Government of Mexico, the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, conducted an official visit to the country from 22 April to 2 May 2013. The objective of the visit was to examine the current level of protection of the right to life in law and in practice in Mexico.

2. The Special Rapporteur wishes to thank the Government of Mexico for its invitation to visit the country and for the extensive cooperation provided during the preparation and conduct of this visit. The Special Rapporteur was impressed by the openness and willingness to engage with his mandate. He is also grateful to the staff of the Office of the United Nations High Commissioner for Human Rights in Mexico for providing assistance throughout and after his visit.

3. The Special Rapporteur visited Mexico City, and the states of Chihuahua, Guerrero and Nuevo León. The visit provided an opportunity to engage with the relevant authorities from the executive, legislative, and judicial branches at the federal and state levels and with national and local human rights institutions and civil society organizations, including affected individuals from the states of Tamaulipas and Coahuila. During his visit, he had the opportunity to meet with more than 120 officials of the federal and state governments.

4. At the federal level, the Special Rapporteur met with high-level authorities from the Ministry of Foreign Affairs, the Ministry of the Interior, the Ministry of Defence, the Ministry of the Navy, the Supreme Court of Justice, the Office of the Attorney-General of the Republic, the Senate, the Chamber of Deputies and the National Human Rights Commission. In Mexico City, he also held meetings with the Attorney-General of the Federal District, the Human Rights Commission of the Federal District and the Institute for Forensic Sciences, which is attached to the Superior Tribunal of Justice of the Federal District. In Chihuahua, he met with the Governor and the Minister of the Interior, prosecutorial authorities of the state Chief Prosecutor, state forensic services, law enforcement officials, the state Human Rights Commission, and the delegation of the Office of the Attorney-General of the Republic and the Justice Centre for Women in Ciudad Juárez.

5. In Guerrero, he held meetings with the Minister of the Interior, the Attorney-General's Office, the Chief Justice of the High Court of Justice and other state authorities, the delegation of the Office of the Attorney-General of the Republic, the state Human Rights Commission and the Truth Commission of the state of Guerrero. In Nuevo León, he met with the Governor and other state authorities, the office of the state Attorney-General, the delegation of the Office of the Attorney-General of the Republic and the state Commission for Human Rights. In each of these states and in the Federal District, he also met with representatives of international and local civil society and victims. In addition, he consulted with relevant members of the United Nations Country Team.

6. This report was completed on 14 April 2014. It focuses on the situation at the time of the visit, although some reference is made to subsequent developments. As has been the practice of former special rapporteurs on extrajudicial, summary or arbitrary executions, in order to facilitate follow-up with the State with respect to the recommendations, a subsequent report will be prepared in two years.

II. General observations

7. The last visit by the Special Rapporteur on extrajudicial, summary or arbitrary executions to Mexico took place in 1999. In her report, the Special Rapporteur at that time highlighted a number of positive developments and challenges related to the right to life in

Mexico, but warned against the militarization of internal security (E/CN.4/2000/3/Add.3). Subsequent to her visit, the situation deteriorated significantly with regard to the right to life, and impunity endures as one of the principal challenges for the country.

8. Interlocutors with whom the current Special Rapporteur engaged during his visit recounted how, since around 2007, the military had been deployed to take on the increasingly powerful drug cartels in what it called a "war on drugs." In the course of this deployment, widespread extrajudicial executions were perpetrated by the security forces as well as the cartels, often without accountability. The Special Rapporteur is concerned that Mexico continues to experience alarming levels of violence. Extremely violent incidents, particularly violations of the right to life, continue to take place at an intolerable level.

9. Mexico faces significant challenges to protecting the right to life. There are considerable flows of drugs and vulnerable migrants throughout the country from south to north, while guns flow in from the northern border with the United States of America. Powerful and violent cartels, some of them reaching far beyond the borders of Mexico, have become entrenched and have, according to information received, infiltrated sectors of the Government. In addition, a number of vulnerable groups are particularly targeted by, or are so-called casualties of, this and other sources of violence.

10. The Special Rapporteur was informed that some states in Mexico have experienced unprecedented violence during the last six years or more.[1] Cities in states such as Chihuahua and Guerrero have at various stages been classified as some of the most dangerous in the world.

11. According to information provided to the Special Rapporteur by the Mexican authorities, 102,696 intentional homicides were committed during the previous federal administration, from December 2006 to November 2012. The Government acknowledges that as many as 70,000 of these were drug-related killings (almost 70 per cent). This is coupled with, and indeed made possible by, systematic and endemic impunity. According to the National Human Rights Commission, only around 1 to 2 per cent of crimes, including homicides, currently lead to conviction.[2]

12. The gravity of the situation should be confronted squarely, and most of the officials the Special Rapporteur met were open about this. Therefore, the Special Rapporteur welcomes information indicating that some positive legal and policy reforms have been introduced recently and that others are being developed and instituted now. There has also been an important shift in the message conveyed by the public authorities. The Special Rapporteur takes note that the security and justice section of the Pact for Mexico (an agreement signed by the President, Enrique Peña Nieto, and the main political parties in the country) highlights the objective of "recovering peace and liberty, by decreasing the levels of violence; specifically, efforts by the Mexican State will be focused on combating the three crimes that most harm people: homicide, kidnapping and extortion"[3]. What is still needed, however, are strategies on how these goals are to be implemented.

13. In his inaugural address in December 2012, Mr. Peña Nieto, declared: "This will be a Government that serves the rights of every Mexican. The first and last right is the right to human life." This statement is commended by the Special Rapporteur inasmuch as it suggests that the federal Government of Mr. Peña Nieto will measure the effectiveness of

[1] See "Transición traicionada: Los derechos humanos en México durante el sexenio 2006-2012". Available at www.centroprodh.org.mx/index.php?option=com_docman&Itemid=28&lang=en.

[2] See www.cndh.org.mx/sites/all/fuentes/documentos/conocenos/Agenda_2013_1.pdf.

[3] See *Pacto por México*. Available at http://pactopormexico.org/PACTO-POR-MEXICO-25.pdf (sect. 3, p. 17).

its strategy to combat crime, at least in part, by the reduction in the number of homicides in Mexico. However, it is important that these efforts be undertaken with full commitment to and in compliance with international human rights standards. A decreased emphasis by public authorities on the subject of violence and crime may not reflect actual decreases in commissions of violent crimes in fact. During the course of his visit, the Special Rapporteur received extensive information indicating that killings and impunity for homicide continue to be widespread in many parts of the country. The present report therefore calls upon the Government of Mexico, at the federal and state levels, to ensure that the right to life is protected in terms of individual incidents, as well as in public statements and legal and policy reforms. The report emphasizes that a central component of protecting the right to life is ensuring accountability in all cases where it has been violated.

14. In this regard, the Special Rapporteur emphasizes that while it is clear that one aspect of any possible solution will lie in a forward-looking approach – for example, removing the social root causes of violence and preventing killings from taking place – and that some structural reforms are needed, it is also of central importance to keep looking back and to deal with crimes that have been committed. Thus, the Special Rapporteur encourages the Government to build a robust and effective system that investigates and where appropriate delivers punishment regarding each and every killing that occurs as the key to eventually breaking the cycle of violence.

15. Before the start of his visit, the Special Rapporteur addressed the Government of Mexico regarding 31 specific cases in which the right to life appears to have been violated. The 31 cases cover the period from 2007 to 2012. The main violations alleged include, sometimes in combination: death threats; deaths in custody; killings by members of the army, navy, and police; excessive use of force by law enforcement personnel; killings during protests; killings by presumed members of illegal armed groups; and enforced disappearances, torture, and arbitrary detention resulting in death. The Special Rapporteur wishes to thank the Government of Mexico for having provided information concerning 26 of the 31 cases, including information on the factual circumstances of the alleged violation and official response, status of the investigations and, where applicable, prosecutions and any instances where the cases have been resolved. However, the Special Rapporteur remains deeply concerned that a great number of these cases of killings appear not to have resulted in charges and/or not to have been investigated promptly or thoroughly, thus resulting in apparent impunity. He reiterates the importance of due diligence and urges the Government to ensure that the perpetrators of these killings are brought to justice and the rights of victims' families honoured, including through the payment of compensation. Moreover, the Special Rapporteur strongly encourages the Government to provide a substantive reply to the five remaining cases.

III. The legal and policy framework for securing the right to life

16. Over recent years, Mexico has instituted important legal and policy changes, or is currently in the process of articulating such reforms. The right to life cannot be properly secured without a strong national institutional framework; strengthening in this regard is to be commended. However, in practice, a number of these systems remain problematic, because of incomplete implementation, flaws in their design, corrupt or improper functioning, or other practical shortcomings. The Special Rapporteur takes note of the commitment shown by Mexico to setting the legal and policy groundwork but stresses that more must be done in this regard, at the structural and the implementation levels, to prevent the unlawful loss of life and ensure the end of impunity throughout the country.

A. The Constitutional and international law bases

17. The Special Rapporteur takes note of significant positive constitutional reforms that have occurred over the last five years. Reforms in 2008 initiated the process to transform the country's semi-inquisitorial system into an oral, adversarial system of criminal justice. This entails the introduction of the presumption of innocence (previously recognized by the Supreme Court) and the provision that any statement that is not made in the presence of a judge is invalid as evidence, as a way of countering forced confessions. Interlocutors reported, however, that implementation is slow. In some states that have implemented the new system, such as Chihuahua, disturbing counter-reforms have been introduced that undermine the critical principles of the reforms.

18. The Special Rapporteur commends Mexico for the 2011 reforms establishing that, once ratified, international human rights treaties have equal status to the Constitution. However, he is concerned that, as this report was being prepared, the Supreme Court established in plenary discussions that where the Constitution restricts human rights, that restriction applies, notwithstanding international treaty obligations. This risks undermining the application of the *pro homine* principle, requiring legal provisions to be interpreted in favour of individuals when there is uncertainty. At the time of writing this report, the final decision had not yet been published.

19. During the course of this visit, it was well demonstrated that Mexico is deeply engaged with the international and regional human rights systems and that it is a country open to international human rights scrutiny. The Special Rapporteur underlines that such openness and commitment of the State to the international human rights agenda strengthens its capacity to protect the right to life in partnership with the international community. A number of improvements to its domestic system would more fully ensure realization of these commendable commitments.

B. Problems of continued militarization

Moving away from the military paradigm in law enforcement

20. According to information provided to the Special Rapporteur, Mr. Peña Nieto has stated that the armed forces will continue carrying out public security tasks until the new strategy on security and justice is applied, which will allow for their gradual return to the barracks. The Special Rapporteur welcomes this commitment, although few details were available on its implementation at the time of writing.

21. The Special Rapporteur further notes that, in any country, soldiers involved in policing are notoriously unable to relinquish the military paradigm. Their training often leaves them unsuited for law enforcement. The primary objective of the military is to subdue the enemy through the use of superior force, while the human rights approach, in terms of which all law enforcement operations must be judged, focuses on prevention, arrest, investigation and trial, with force only as the last resort, and lethal force being permissible only to prevent the taking of life. The Special Rapporteur warns that following a military approach to public security risks creating a situation where a civilian population is vulnerable to a wide range of abuses. Moreover, there is insufficient accountability for these abuses in the military justice system, which lacks independence and transparency and has systematically failed to effectively prosecute soldiers alleged to have committed serious abuses. This reality is particularly critical in Mexico and should be addressed immediately.

22. The Special Rapporteur was informed that, from 2006 to April 2013, of the 52 recommendations made by the National Human Rights Commission (CNDH) relating to violations of the right to life, 39 were made to the Ministry of Defence and the Ministry of

the Navy. Therefore, three out of four CNDH recommendations involving the right to life were directed at the armed forces. He considers this to be a highly revealing figure that underscores the risk of assigning public security tasks to the military.

23. Interlocutors at various levels of Government described how, within the strategies to reduce violence, the Pact for Mexico proposes the creation of a national gendarmerie. However, in the Special Rapporteur's estimation, many questions remain about this new governmental security force and the level of support it enjoys. The reasons for its creation were not clarified and its characteristics remain undefined, along with the nature of its relationship with other security institutions.

24. The Special Rapporteur received information that the national gendarmerie was expected to have 40,000 officers who are militarily trained but under civilian control, although information subsequently obtained suggests that the numbers could be significantly lower. He reiterates that, if the gendarmerie's establishment moves forward, all efforts should be made from the outset to ensure that, as a law enforcement body, it functions within a human rights framework, including through sufficient and specialized training on the use of force in law enforcement contexts, rather than a focus on military principles. In line with this, the Special Rapporteur stresses that officers who commit wrongful acts should be held accountable under the civilian justice system.

25. An important component of overcoming the military paradigm is to focus on strengthening the capacity of civilian authorities – including judges, prosecutors, investigative police, and other justice officials – to prevent, investigate and prosecute crimes. Information received stipulates that the budget of the army and the navy has increased significantly since late 2006. Mexico should consider making the necessary budgetary allocations to strengthen the capabilities of the civil authorities responsible for ensuring order and justice.

26. Likewise, the number of civilian police should be increased. According to information received, only half of the states have a police presence above the minimum recommended by the United Nations. Coahuila and Tamaulipas, where some of the highest levels of insecurity prevail, have the lowest rate of police presence in the country. The quantity and quality of police personnel should be improved significantly and other measures taken to reconstruct the social fabric in a country gravely affected by social disparity.

Ending military jurisdiction in cases involving crimes against civilians and human rights violations

27. The use of military courts to try military personnel for homicides involving civilians in Mexico is an issue of serious concern. It has been condemned by the Inter-American Court of Human Rights and the Supreme Court of Justice alike. This concern was clearly recognized by the authorities during the course of the Special Rapporteur's visit. He received assurances from the Office of the Attorney-General of the Republic, the navy and the army that this practice is on its way out and, according to the relevant authorities, that all such cases are now transferred to the civilian system for investigation and trial. This would mean that more than 5,000 investigations into human rights violations allegedly committed by military personnel against civilians have to be transferred from the military justice system to the civilian justice system. However, the Special Rapporteur notes that no empirical evidence on the transfer of these cases had been made public at the time of writing this report and he stresses the importance of publishing that information.

28. The Special Rapporteur was informed by government officials that this de facto situation will also be enshrined in law. A new bill was being prepared for adoption, in which crimes against civilians were to be explicitly removed from the jurisdiction of the

military courts. The Ministry of Defence assured the Special Rapporteur that this move enjoyed its support. In spite of these assurances, given without reservation to the Special Rapporteur, civil society members expressed concern that the bill might not be approved or might include limits that were incompatible with international law.. The Special Rapporteur stresses that the reform should be accomplished as a matter of priority; he will follow its progress with keen interest.

29. At the same time it will remain important to ensure that the civilian criminal justice system has the capacity to deal with the increased workload. Moreover, the Special Rapporteur recommends that Mexico should consider establishing civilian jurisdiction over all cases of homicide by the military, even when the victim is not a civilian.

C. Further legislative needs

A legal framework for the use of force

30. The Special Rapporteur received a strong impression of the absence on the federal and most state levels of a coherent and widely recognized legal framework for law enforcement officials on the use of force, including in arrest and demonstrations. The Special Rapporteur acknowledges the existence of four local laws and various protocols on the issue. He was informed that a bill had been drafted by the Federal Government, but stresses that a comprehensive and authoritative law is required. Setting out the criteria and limits on the legitimate use of force is key to ensuring the right to life. He welcomes the assurance he was given that federal legislation on the use of force will be drafted and that the Government has signed an agreement with the International Committee of the Red Cross for that purpose. The Pact for Mexico also includes this commitment.

31. Such legislation should provide that lethal force is to be used only when strictly necessary to protect life in immediate danger and that the use of any kind of force shall always be for legitimate law enforcement purposes and proportional to these lawful objectives. It is also important that the law includes accountability measures for instances of unlawful use of any force.

32. The extent to which laws on the use of force are promulgated will be an important measure of the commitment of Mexico to establish a stronger national human rights framework. This should occur at all levels of government and be disseminated through training and other communication channels, to become part of the culture of all forces involved in law enforcement and of the broader public as well.

33. In the state of Guerrero, the Special Rapporteur received direct accounts from student teachers who were evicted from a protest in December 2011, in an operation in which civil authorities made unnecessary use of lethal force that resulted in the wrongful death of two students. He was also informed of other instances in which authorities who control protests or detain people have made disproportionate use of force, which has put people's right to life at serious risk.

Homicide and the organized crime law

34. The Special Rapporteur considers it surprising and significant that homicide is not a crime listed in the Federal Act on Combating Organized Crime, as he was informed during his visit. As a result, in cases of homicide, federal authorities often do not investigate and prosecute these crimes even when initial evidence clearly suggests that they were linked to organized crime, and despite the fact that the federal authorities may be better equipped to do so than state authorities. The Special Rapporteur was informed of several instances in which disputes have arisen about whether federal courts have jurisdiction over cases of

homicide. This lack of clarity about who has the power to investigate and prosecute homicides linked to organized crime is an additional obstacle to the provision of justice.

D. Opportunity for police improvements

Fighting organized crime within a human rights framework

35. According to information received, almost 70 per cent of the homicides recorded in recent years have been attributed to organized crime. It is important to emphasize that it remains the responsibility of the Government of Mexico to prevent these killings, and to diligently investigate and prosecute after their perpetration. The Special Rapporteur was alerted to the concern that security forces may believe that people involved in drug-related activities are disposable in the efforts of the State to address organized crime, that "the problem solves itself" if a member of one cartel kills a member of another cartel. Such an approach undermines the value of life itself. Moreover, there often seems to be a presumption that those killed or disappeared were involved in crime and were thus less worthy of protection.

Coordination between the different levels and branches of government

36. A further cause of impunity is a lack of coordination between procedures and systems, which has added significance in a federal system. Instances were brought to the attention of the Special Rapporteur in which cases were sent back and forth between different parts of the judiciary; where there was uncertainty whether the federal or state courts had jurisdiction; and where databases in different parts of the country were not in contact with each other. However, a positive example was provided by the state of Nuevo León, where the Special Rapporteur was informed that weekly meetings between different parts of the criminal justice system apparently ensure a high level of coherence in the system.

37. As a further matter of policy and institutional coordination, the Special Rapporteur underlines that the continuation of the annual meetings between the different forensic services of the country – which currently rely on external funding – will be important.

Potential of international collaboration and the Arms Trade Treaty

38. The Special Rapporteur takes note of the promising movement being made on the Arms Trade Treaty, including after the completion of his visit to the country. He commends Mexico for signing the Treaty on the day it was opened for signature, 3 June 2013, and for ratifying it in September 2013. He encourages Mexico to consider actively how the Treaty might provide a means for reducing the problematic flow of weapons in the country in the future, in conversation with other States at the regional and international levels.

39. In particular, he urges Mexico to work closely with neighbouring countries to the north, south, and in the Caribbean so that those States can also sign and ratify the Treaty. In line with the object and purpose of the Arms Trade Treaty, he calls on Mexico to explore all avenues for better information-sharing and cooperation with other States in order to stem the flow of weapons.

E. The need to ensure a more robust legal and law enforcement system

40. Under international law, violations of the right to life involve both the taking of individual life by State actors, such as those involved in law enforcement, and a failure by the State to exercise due diligence to prevent killings by non-State actors. Violations also

result from the failure to adequately investigate, properly identify and hold perpetrators to account and to provide reparation to the victims. The Special Rapporteur recalls that impunity under such circumstances is in itself a violation of the right to life by the State and urges Mexico to ensure an end to impunity throughout the country.

Corruption and intimidation in the legal system

41. The Special Rapporteur is concerned that complicity of some security and judicial officials with organized crime, especially at the state and municipal level, weakens the protection of the right to life in Mexico. Although complicity may result from corruption, he was also informed that some officials may act upon instruction from organized crime because of threats, both real and perceived.

Ensuring proper investigations

42. Civil society representatives reported extensive omissions in investigations by federal and state authorities into cases of alleged killings. In all too many cases where someone was killed, no serious investigation is conducted. The Special Rapporteur was concerned to learn that the increase in the rate of homicides recorded has not been followed by an increased ability of the criminal justice system to punish those responsible. In some cases a family member filed a report with police or other authorities regarding a case of homicide or disappearance resulting in death, and no serious investigation followed.

43. Numerous individuals informed the Special Rapporteur that relatives have had to play the role of investigator into the death of their loved ones, gathering evidence where authorities refused to take investigative action themselves. He was told that investigative police were often quick to close a case when there was a suspicion without adequate investigation that it resulted from ties to organized crime, as though no further action was necessary.

44. The Special Rapporteur is further concerned that inaccessibility of evidence to the parties involved may result in an improper judicial process. He heard about a number of cases in which the investigative authorities had failed to adequately preserve, classify and transfer biological and material remains, so that they were insufficient both for victim identification and court proceedings.

45. It was also brought to his attention that public officials may manipulate and in some cases even falsify the crime scene, especially when the unlawful use of force by a State actor is implicated. Multiple interlocutors informed the Special Rapporteur that guns and bullets had been planted on crime scenes after killings in order to implicate the victim or other actors. For example, in the city of Monterrey, the Special Rapporteur was briefed on the case of two college students who, after being shot to death by soldiers, were wrongly identified as members of organized criminal groups. He was informed that an independent investigation proved that both youths had been killed arbitrarily by military personnel; that the crime scene had been altered to make it appear that they had died in a shoot-out; and that weapons had been planted on the victims to try to show that the military had acted in legitimate defence and not in an act of disproportionate use of force in the vicinity of the campus. However, even official accounts admit that progress has not been made in the investigation of those responsible for the killing or the manipulation of the evidence.

46. Some protocols to investigate serious offences and search for missing vulnerable persons have been adopted in Mexico, which marks a positive step. The different protocols to investigate femicide in certain jurisdictions, and the Alba and Amber Protocols, show the value of standardizing specific polices. However, there is concern that for those protocols that do exist, safeguards are insufficient or they are not properly followed, for example by keeping proper logbooks. The Special Rapporteur was told that authorities often failed to

take immediate action to search for missing or disappeared persons, frequently telling families that they had to wait 72 hours before making a formal report. Training on and implementation of appropriate standards for investigation should be urgently addressed.

47. The Special Rapporteur was impressed by the operations and services he witnessed at the Institute for Forensic Sciences in Mexico City, which is attached to the Superior Tribunal of Justice of the Federal District, and the forensic services in Chihuahua. However, he heard from institutional and civil society actors that the coordination of forensic services across states is insufficient, that certain state services are far inferior to the ones he saw and lack the capacity for proper analyses, and that some cases may also not be reviewed by forensic experts at all. In many instances the forensic services apparently do not retrieve bodies from crime scenes themselves. This can result in a situation where evidence is lost and prosecutions cannot take place.

48. The Special Rapporteur recalls that in both investigations and prosecutions, the powers of modern technology can enhance the efforts of the State to ensure greater accountability, thus reducing its reliance on the use of force. He recommends that Mexico make greater use of the superior access it has to intelligence networks and regional cooperation to counter organized crime and abuses by security forces which threaten the right to life.

49. He underlines that this should have two interlinked components. On the national level, databases should be created inter alia in the areas of fingerprinting, DNA, genetics, unidentified remains, and missing persons and should be made digital and linked. Moreover, Mexico should play an increasingly active role in linking up with other States, especially in Central America, to ensure that such information is also shared with the security services of those States.

50. The Special Rapporteur considers that violence in Mexico has an important regional component, in the sense that it spills over into surrounding countries, but also that it is fuelled by events elsewhere. He emphasizes that it is consequently important to seek collaboration in the region to address the issue, for example through the Central American Integration System.

Convictions of innocent individuals

51. The Special Rapporteur was informed that one manifestation of impunity in Mexico is that innocent people are set up for conviction. He was informed that in some cases, perpetrators were knowingly not brought to justice but instead an innocent, often vulnerable individual such as a migrant, indigenous person or poor person was punished instead. At other times, a suspect was apparently prosecuted (as was the case with Israel Arzate) and even convicted based only on self-incriminating confessions obtained through torture or by the testimony of supposed witnesses who were not present at the scene of the crime. Similarly, the Special Rapporteur received information about cases in which people were tried for murder without respect for due process. In some of these cases, after years of imprisonment, people who had been improperly processed were later released without adequate compensation.

52. The Special Rapporteur considers that the use of such scapegoats makes a mockery of justice. While this may create an illusion of accountability, it in fact results in a double injustice. He recalls that full respect of due process is crucial to ensure justice and combat impunity. The credibility of the judicial system is essential to encourage the participation of the population in all efforts to combat crime.

Enhance institutional independence

53. The Special Rapporteur is concerned that a number of the institutions involved in the administration of justice may lack full independence and thus contribute to impunity. He received indications that both State actors and members of organized criminal groups who are tried may be given insufficient sentences because the prosecution or judges are not independent.

54. The Special Rapporteur received the direct impression from the Attorney-General of the Republic and a number of state Attorneys-General that they clearly take their work very seriously. However, some expressed the fear of intimidation, threat and attack against prosecutors or other judicial authorities. The Special Rapporteur remains concerned that this undermines efforts to ensure accountability in the protection of the right to life.

55. He is also concerned that state forensic services may not be sufficiently independent and stresses that this is crucial to ensuring proper investigation, prosecution, and ultimately, accountability.

Intimidation of witnesses and family members

56. Another factor contributing to incomplete prosecution cases is the concern surrounding witness intimidation. Witnesses appear in some cases to be threatened or they fear identification by the accused or complicity by the authorities with organized crime, and so do not come forward to testify. The Special Rapporteur received accounts that witnesses and families of victims often see prosecutors as susceptible to corruption, connected to perpetrators or ineffective. He also observed that witnesses and families of victims were reluctant to trust the Government's protection programmes because security was provided by Government police, or because they knew that the programmes had been ineffective in providing protection in other high-profile cases. Witnesses and families of victims assumed that there was collaboration between police and perpetrators in some cases.

57. He also heard alarming accounts of families facing reprisals or threats from state authorities or organized criminal groups as a result of their calls for investigation or prosecution. In one case in Chihuahua, a mother was reportedly disappeared after she repeatedly called upon authorities to investigate the disappearance of her daughter. Another mother who was calling for investigation into her child's death explained how she was warned to stop pressing authorities because she might end up like the first mother.

58. The Special Rapporteur emphasizes that the Government should provide greater protection for families of victims and should initiate legal cases itself pursuant to proper investigative and prosecutorial functions. Otherwise, such scenarios lead to a loss of faith in the legal system by the public, and in turn to greater criminality and impunity.

59. The Special Rapporteur welcomes the adoption of the new Federal Code on Criminal Procedure, which provides some protective measures for victims. The adoption of the Victims Act is also a welcome development. However, the Special Rapporteur is concerned that the emphasis the Act places on compensation for victims has not been accompanied by adequate measures to encourage accountability for serious violations.

F. Human rights institutions

60. It is recalled that the existence of human rights institutions is essential for the protection of the right to life. Their role in monitoring and documentation is essential to prevent abuses and ensure the rights of victims and should be further improved in Mexico.

61. Mexico has a National Human Rights Commission and 32 state human rights commissions. It is necessary to strengthen their capacities and degrees of autonomy from the State.

62. Similarly, the Special Rapporteur emphasizes that it is essential that the authorities have the political will to comply with CNDH recommendations. He finds it noteworthy that, of all the recommendations issued by CNDH between January 2006 and April 2013, in which it concluded that the right to life had been violated, only 18 have been fully complied with, 6 present unsatisfactory compliance, 27 have been partially complied with and 4 have not been accepted. However, it appears that even when these recommendations have been "fully complied with" according to CNDH, this has not necessarily translated into effective prosecutions of those responsible for the violations of the right to life, as in the case of the two students killed at Monterrey Institute of Technology and Higher Education. CNDH should use the full extent of its follow-up procedures (or if necessary, consider revising the system) to satisfy itself not only that investigations are formally opened into the incidents in which it issues recommendations, but also that investigations are actually conducted in a prompt and thorough manner aimed at ensuring that those responsible are brought to justice. All indications suggest this has not happened.

63. The Special Rapporteur emphasizes that it is particularly critical that there be a high level of implementation of recommendations related to violations of the right to life, due to the extreme seriousness of these violations. Nevertheless, only one in three recommendations has been fully implemented. He emphasizes the need for the authorities to demonstrate a stronger commitment to accountability for violations of the right to life.

G. The legacy of the "Dirty War"

64. The Special Rapporteur is concerned that the total absence of effective prosecutions following the "Dirty War," in which a large but unknown number of persons was executed, contributes to impunity in Mexico. The Special Rapporteur received information from some of the survivors of the 1968 Tlatelolco and 1971 Corpus Christi massacres, in which students who had been holding peaceful demonstrations were arbitrarily executed. A particularly shocking story was related by the son of Diego Lucero, whose father was a guerrilla who, after having been detained and questioned, was executed by law enforcement officers in the state of Chihuahua in 1972. The Special Rapporteur was told that the demand for justice by his son has not received an appropriate response from the state.

65. He was also informed about the seemingly abandoned process to deliver justice, reveal the truth and provide reparations to the victims of extrajudicial executions during this period.

66. The Government, after it came into office in 2000, established the Office of the Special Prosecutor under the Attorney-General of the Republic to investigate and bring charges regarding this period. One major obstacle reportedly facing the Attorney-General's Office was the statute of limitations. Although Mexico has been a party since 2002 to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, Mexico filed an interpretative declaration stipulating that the Convention would only apply to crimes that occurred after 2002. As a result of the statute of limitations, many of the crimes of this era are considered to have expired.

67. No one has been convicted and there is no general programme of reparations for the victims of extrajudicial executions during the Dirty War. After many years, there have been no reparations to relatives of any victims of extrajudicial executions.

68. In 2012, a Truth Commission was created in the state of Guerrero to investigate human rights violations perpetrated in the state during the Dirty War. The Special

Rapporteur was informed that the Truth Commission's work is hampered by the fact that it does not have access to the information compiled by the Office of the Attorney-General of the Republic on cases related to this period.

69. The Special Rapporteur considers that ensuring accountability for the unlawful executions of this era – in addition to the abuses of the more recent past – is critical to ending impunity and creating a meaningful record from which Mexico can move forward with credibility in ensuring protection for the right to life in the future.

IV. Vulnerable persons

70. The high level of killings of vulnerable persons was brought to the attention of the Special Rapporteur as a particularly urgent concern. Given the pattern of these violations, and the pre-identified character of the victims, it is possible for the Government to undertake better protection measures. Some concerns surrounding vulnerable persons are set out below.

A. Women

71. Numerous interlocutors alerted the Special Rapporteur to the persistence of violence against women, often resulting in death, and to the impunity enjoyed by perpetrators. Killings of women reportedly often involve gender-based attacks including sexual assault and other forms of brutality such as hanging, strangulation, suffocation and drowning. The Special Rapporteur was also informed that there is a direct link between the dramatic increase in numbers of femicides and the deployment of the army in law enforcement contexts.

72. The Special Rapporteur takes note of the progress regarding Mexico's legislative and institutional framework to address violence against women at the federal level. The adoption of the 2007 General Act on Women's Access to a Life Free of Violence[4] and the codification of femicides at the federal and state levels are developments in the right direction. However, violence against women, specifically femicide, remains a serious concern in practice, as indicated in the 2012 concluding observations of the Committee on the Elimination of Discrimination against Women (CEDAW/C/MEX/CO/7-8, para. 17). According to CNDH, 4,419 femicide have been registered since 2007.

73. While some positive steps have been taken to implement the *Campo Algodonero* (Cotton Field) ruling of the Inter-American Court of Human Rights,[5] further action remains to be taken. The Special Rapporteur emphasizes that femicide should be codified in all relevant criminal codes based on objective characteristics and that police investigation protocols for femicide should be standardized.

[4] Published in the Official Gazette on 1 February 2007.

[5] Inter-American Court of Human Rights, *Case of González et al ("Cotton Field") v. Mexico*, Judgment of November 16, 2009 (Preliminary Objection, Merits, Reparations, and Costs).

B. Migrants

74. Undocumented migrants who transit through Mexico put their lives at serious risk, although it is difficult to obtain reliable figures on the numbers killed.[6] Reportedly, there is a direct link between disappearances and killings of migrants, organized crime, and complicity of law enforcement, investigative and other authorities. Migrant shelters have been subject to multiple attacks by organized criminal groups and insufficient preventative and accountability measures have been inadequately mobilized.[7] Moreover, migrants are afraid to bring cases to the police. Chronic impunity therefore persists. The Special Rapporteur urges prompt investigation of killings of migrants in order to punish those responsible and provide compensation to victims or families of victims. He also calls for strengthening of the protection framework, including ensuring the safe operation of shelters.

C. Journalists and human rights defenders

75. Journalists and human rights defenders are key actors for a democratic society. During the course of his visit, the Special Rapporteur received information indicating that an alarming number of these individuals receive threats and are deprived of their lives. According to the CNDH, 83 journalists have been killed since 2000.[8] Journalists who report on crime and public officials appear to be at greatest risk. CNDH reports that since 2005, 18 human rights defenders have been killed and many more have faced death threats.

76. Several interlocutors indicated that many of the attacks against journalists and advocates are carried out by authorities. In the city of Chihuahua, the Special Rapporteur was presented with the case of human rights defender, Marisela Escobedo, who was murdered in December 2010 outside the state offices while demanding justice for the femicide of her daughter. In this regard, the Special Rapporteur stresses the importance of ensuring effective protection measures, through judicial or other means, for individuals and groups in danger of extralegal, arbitrary or summary executions, including those who receive death threats.[9]

77. The Special Rapporteur takes note with appreciation of the adoption of the Act on the Protection of Human Rights Defenders and Journalists;[10] the creation of an office of the special prosecutor for offences committed against freedom of expression; and the constitutional and legal reforms that enable federal authorities to investigate, prosecute and judge crimes against journalists specifically. Yet despite these positive institutional steps, the Special Rapporteur was informed that these developments have yet to be sufficiently implemented in practice.

78. Because of the threat of targeting and reprisals, many journalists and human rights defenders continue to self-censor, leading to further impunity and lack of public information. Precautionary measures granted to journalists and human rights defenders are

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[6] Maureen Meyer, with contributions from Stephanie Brewer, "A Dangerous Journey through Mexico: Human Rights Violations against Migrants in Transit". December 2010. Available from www.wola.org/sites/default/files/downloadable/Mexico/2010/DangerousJourney.pdf.

[7] Human Rights Watch, *World Report 2013*. Available from www.hrw.org/world-report/2013/country-chapters/mexico?page=2.

[8] See www.cndh.org.mx/sites/all/fuentes/documentos/Comunicados/2013/COM_2013_114.pdf.

[9] Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, para. 4.

[10] Published in the Official Gazette on 25 June 2012.

often subject to delay, very limited and not adapted to the particular risks they continue to face. The full participation of journalists and human rights defenders in the mechanism created by the Act on the Protection of Human Rights Defenders and Journalists and in the elaboration of their own risk assessment and formulation of precautionary measures should be ensured.[11]

D. Children

79. There is no systematic or disaggregated official data on the total number of children who have been unlawfully executed, but a number of civil society actors informed the Special Rapporteur that the number is high. Since 2007, a steady increase has been recorded in the number of deaths of young people aged between 12 and 17. The Special Rapporteur was informed that from 2006 to 2010, 994 children lost their lives in the so-called war against organized crime.

80. The Special Rapporteur was informed about a number of serious cases of unlawful killing of children by police or soldiers, including but not limited to the cases of:

(a) Martin and Brayan Almanza on 3 April 2010, in the state of Tamaulipas. The killings were allegedly carried out by soldiers, who also altered the crime scene to try to escape responsibility and make it appear that the deaths were the result of an armed confrontation;

(b) Daniel Zamorano Rocha on 8 January 2013, in Colonia Tantocob, Ciudad Valles, San Luis Potosí. Several witnesses indicated that a state police agent, apparently intoxicated, shot the minor in the head. In connection with this case, the Special Rapporteur sent an allegation letter on 12 June 2013. The Special Rapporteur thanks the Government of Mexico for its response to this communication on 27 August 2013. He notes that the state police officers allegedly involved in the crime are being prosecuted and he recommends that the State meet its obligation to bring the perpetrators to justice.

81. Interlocutors stated that children are also recruited by organized criminal groups and thus become potential targets of inter-cartel violence and the "war on drugs", and authorities are therefore less committed to investigation and accountability. The Special Rapporteur was informed that on a number of occasions, authorities publicly identified innocent young people as members of gangs or suspected perpetrators of organized criminal violence, then released them without protective measures. The young people were subsequently found executed, presumably the result of either vigilante justice or action by members of rival cartels or security forces.

E. Inmates and detainees

82. The Special Rapporteur notes with concern the total lack of comprehensive and reliable information on deaths in prisons and other places of detention, either as wilful homicides or suspicious suicides. According to CNDH, 545 inmates have been killed since 2010.[12] During the course of the Special Rapporteur's visit, 13 inmates died in a prison in the state of San Luis Potosí.

[11] See www.scribd.com/doc/105228482/Freedom-House-Estudio-proteccion-Legal-de-periodistas-en-Mexico.

[12] See www.cndh.org.mx/sites/all/fuentes/documentos/Comunicados/2013/COM_2013_114.pdf.

83. The frequency of prison riots has increased over the last few years. The Special Rapporteur was informed that in the state of Nuevo León, a violent confrontation in the prison in Apodaca led to the deaths of at least 44 people in February 2012. In larger prisons, deaths often result from prison riots, mass escapes and targeted assassinations of inmates due to cartel activities, corruption of guards, and self-rule within the prisons. During his visit, the Special Rapporteur was informed of cases of persons who had been arbitrarily detained and had been tortured, resulting in their deaths. Similarly, the Special Rapporteur learned of cases of persons who were tortured and subsequently found dead in prisons.

84. Mexican authorities have failed to address adequately the problem of self-rule and appear to stand by, out of fear or complicity, while inmates resort to using deadly weapons and violence. In some cases the authorities are directly complicit. Concerns have been raised that in many prisons the warden will not actually enter the prison ward. The Special Rapporteur recommends addressing the lack of accountability at various levels. If the right to life of inmates and detainees is to be protected, it is imperative that authorities act upon their responsibility to protect the rights of those detained.

F. Lesbian, gay, bisexual and transgender individuals

85. The Special Rapporteur was alerted to an alarming pattern of grotesque homicides of lesbian, gay, bisexual and transgender (LGBT) individuals and broad impunity for their perpetration, sometimes with the suspected complicity of investigative authorities. Several interlocutors stated that between 2005 and March 2013, 555 homicides targeting the sexual orientation or gender identity of the victim were recorded. Sharp weapons are apparently used to kill in many of the cases, and the victims' bodies often show deep cuts and further signs of torture including anal rape and genital mutilation.

86. Killings of LGBT individuals are marked by either a total failure to investigate or a faulty investigation guided by stereotypes and prejudice. This concern has also been raised by CNDH, which has indicated that crimes and human rights violations based on sexual orientation, gender identity or expression are not isolated, but are emblematic of patterns of conduct of some members of society and recurrent actions of certain public servants, including prejudices, dislikes and rejections, reflecting the existence of a serious structural problem of intolerance.[13] The Special Rapporteur was told that authorities are quick to close such cases by calling these killings "crimes of passion" and choosing not to pursue their prosecution as seriously as they should.

87. The Special Rapporteur was further briefed on two cases in which an LGBT individual reported a death threat to government authorities and the state human rights commission and was subsequently killed without intervention or protective measures. According to information received, CNDH has considered a number of crimes based on homophobia in which the perpetrators have been identified as civilians and police officers. The implication of police involvement is reinforced at a systemic level by large-scale impunity.

88. The Government assured the Special Rapporteur that it will be taking this issue further, including through the reactivation of a campaign against homophobia and through other legal and policy mechanisms. The Special Rapporteur stresses the importance of ensuring the accountability of all persons involved in death threats or killings of LGBT individuals.

[13] See www.cndh.org.mx/sites/all/fuentes/documentos/informes/especiales/2010_homofobia.pdf.

V. Conclusions

89. There seems to be wide agreement among various levels of government and civil society that the long-term solution to the problem of violence in Mexico lies in establishing a strong law enforcement system compliant with international standards on the right to life and other fundamental human rights. The need to achieve this goal as soon as possible should be the guiding star of all policy and other reforms.

90. It will be of central importance to Mexico and it neighbours – and indeed to the cause of protecting the right to life worldwide – that Mexico make a concerted effort to move away from relying on military justice systems and turn toward civilian justice instead. Much of this is stated government policy, but it has to find resonance in concrete implementation. The mainstay of any effort to follow this route, if it is to enjoy local and international credibility, will have to be the establishment of a robust civilian justice system: one in which the institutions are strong, independent and interconnected, and the laws are clear, in conformity with international standards, and integrated into institutional and public culture.

91. Such a system should then be used, in a coordinated and consistent way, to deal with the crimes of the past and with new crimes, to set the foundations for a future in which there will be a culture of accountability. Impunity constitutes the Achilles heel of the current system. If it is indeed true – as the figures indicated suggest – that only one or two thousand of the more than 100,000 killings of the past federal administration resulted in conviction, it is not necessary to look further for causes of the rampant violence in parts of the country. Establishing accountability through law is the key to curbing the alarmingly high level of loss of life that has come to be associated with Mexico and to bringing it back at least to what it was in the not too distant past, and then to improving, even from there.

92. Mexico should continue to bring its national and state systems within the international human rights framework.

VI. Recommendations

A. Legal and policy framework

93. The federal and state legislation that is pending should be enacted to ensure the effective implementation of the constitutional reform on human rights. Proposals recently submitted to the federal Congress that would weaken the reform's progressive clauses should be rejected. The *pro homine* principle should be retained and protected and the parity between international and national law should be reinforced.

94. The implementation of the new adversarial and oral criminal justice system should be accelerated at the federal and state levels.

95. Secondary legislation should be adopted, in order to make the Office of the Attorney-General of the Republic fully independent of the executive branch according to the new constitutional framework.

96. The public defender system should be made independent from the executive branch at the federal level and in all states, its infrastructure should be improved, and sufficient human and financial resources should be allocated in order to uphold the principle of equality of parties within the criminal justice system.

97. **The human rights commissions should make more use of their powers granted by law to follow up on their recommendations where prosecutions for homicide are at stake.**

98. **Mexico should create a national forensic services institution. This institution should have autonomous status and provide its services to all parties and authorities that take part in federal and/or state trials, to the human rights commissions, and to civilians. It should have adequate infrastructure, sufficient human and financial resources and standardized protocols that apply nationally.**

99. **A consolidated public database should be created containing information on homicides disaggregated by state, county, gender, age and other relevant criteria in order to facilitate the design of effective public policy strategies and to promote accountability.**

100. **Extrajudicial executions and massacres committed during the so-called Dirty War should be duly investigated, prosecuted and tried, the perpetrators should be punished and the victims and their relatives should receive adequate reparation.**

101. **The Truth Commission in Guerrero should receive all the support needed to ensure that it succeeds. The documentation assembled by the Office of the Attorney-General of the Republic regarding executions during the Dirty War should be made available, if not publicly, then at least to the members of the Truth Commission.**

102. **Consideration should be given to withdrawing the interpretative declaration to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, as it undermines the effectiveness of efforts to investigate, prosecute and try the extrajudicial executions and massacres committed during the so-called Dirty War.**

103. **All necessary steps should be taken, with immediate effect, to ensure that public security is upheld by civilian rather than military security forces.**

104. **All necessary steps should be taken to ensure that the authorities do not alter crime scenes and to guarantee that authorities who obstruct investigations are held accountable, if need be through criminal prosecution.**

105. **The Code of Military Justice should be amended in order to ensure that all violations of human rights allegedly perpetrated by the military are fully investigated, prosecuted and tried by civilian authorities. The immediate transfer of all such cases to civilian jurisdiction should be ensured. Military investigators should not initiate investigations into human rights violations.**

106. **Mexico should ensure that the planned national gendarmerie is created by law, that its officers are properly trained to conduct public security tasks according to international human rights standards, and that they are subject to effective civilian accountability measures and directed by civilian personnel without military backgrounds.**

107. **The Constitution should be amended in order to approve a general law on the use of force – including during demonstrations and arrest – that applies to all federal, state and municipal security forces according to the highest international human rights standards.**

108. **The Federal Act on Combating Organized Crime should be reformed to include homicide as one of the crimes that can be connected to organized crime.**

109. **Homicide cases allegedly linked to organized crime should be transferred to federal jurisdiction by reforming the federal law to allow federal authorities to**

investigate, prosecute and try such cases where the state authorities are not in a position or are unwilling to do so.

110. Mexico should work with countries in Central America to establish shared databases on fingerprints, DNA, genetics and missing persons. A shared database of unidentified remains should also be created.

B. Vulnerable persons

111. Full, prompt, effective, impartial and diligent investigation of homicides perpetrated against women, migrants, journalists and human rights defenders, children, inmates and detainees and LGBT individuals should be ensured.

112. Consideration should be given to codifying femicide in all relevant criminal codes based on objective characteristics; the police investigation protocols for femicide across the country should be standardized; and the ruling issued by the Inter-American Court of Human Rights in the Cotton Field case should be fully implemented.

113. A safe corridor should be created for migrants in transit, including better protection while in transit; a package of protection and accountability measures should be adopted to prevent attacks in migrant shelters; cooperation should be strengthened between state departments and community organizations that provide humanitarian assistance to migrants; adequate redress should be provided to victims of violence committed in the country; consideration should be given to following an approach whereby undocumented migrants can exercise rights such as the right to report crimes to the authorities without fearing arrest; and the dignified repatriation of corpses should be ensured in coordination with the State of origin.

114. Special investigation protocols should be adopted for crimes committed against journalists and human rights defenders, requiring full examination of the possibility that the crime was committed because of the victim's profession.

115. The recent reform that allows federal authorities to exercise jurisdiction over offences committed against freedom of expression should be effectively implemented. The office of the special prosecutor should be endowed with appropriate legal status, autonomy and sufficient resources.

116. Consideration should be given to ensuring the full implementation of the Act on the Protection of Human Rights Defenders and Journalists, providing the necessary financial and human resources for the effective and transparent implementation of the mechanism, guaranteeing close coordination between the bodies responsible for preventive and protective measures, and ensuring the full participation of journalists, human rights defenders, civil society and beneficiaries in the implementation and functioning of the mechanism. Awareness about the existence of the mechanism should be raised, especially at the local level.

117. Appropriate measures should be taken to protect the right to life of children, particularly during public security actions. Regulations should be established for the armed forces, police and justice personnel on how to ensure the rights of children during the investigations of homicides. Data on the number of children killed should be collected and effective public policies introduced to prevent adolescents from being recruited by organized crime.

118. **Conditions for all detainees should be improved in compliance with the Standard Minimum Rules for the Treatment of Prisoners and the right to life of all inmates should be ensured.**

119. **Police and other authorities should be trained on gender-identity and sexual-orientation awareness; protective and precautionary measures should be ensured; and societal tolerance should be encouraged.**

C. General

120. **The protection of the right to life, including the issue of accountability, should have a central place in the national human rights plan, currently under development.**

121. **Public statements by government officials on the legality of killings should not be made without proper consideration of the facts; likewise a stigmatization of victims of violence should never occur.**

122. **Prompt and effective implementation of the Victims Act should be ensured and the full and representative participation of civil society and victims in the implementation and functioning of the Act should be guaranteed. Mexico should ensure that implementation also occurs at the local level.**